



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11853012

Date: JUN. 7, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that while the Petitioner established his eligibility as a member of the professions holding an advanced degree, he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or

educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

As acknowledged by the Director, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner states that he intends to “continue [his] career in the United States as a Logistics Services Consultant.” At the time of filing, the Petitioner was the owner of [REDACTED], a [REDACTED] company established in 2017 primarily engaged in the provision of [REDACTED] logistics solutions. Prior to that, the record indicates that he was employed as area sales manager [REDACTED] for [REDACTED] from 2015 to 2017, and as corporate sales manager for [REDACTED] from 2011 to 2015. In response to the Director’s request for evidence (RFE), the Petitioner indicated that subsequent to the petition’s filing, he started a new business in the United States [REDACTED] a separate legal entity continuing and expanding the business operations of his foreign company.

The Petitioner indicated that his proposed endeavor is to “grow a multimodal logistics business not only to consult and provide needed logistics services to US companies doing business abroad but also bring foreign investment to create even more businesses inside the US domestic economy and particularly the logistics industry.” He further stated that he has “already signed many clients” and is working on [REDACTED] logistics projects, and that he “has many more potential deals including large amounts of foreign investment that is projected to come to the US to create even more American jobs and tax revenue.”

The Director determined that the Petitioner’s proposed endeavor has substantial merit, and we agree with that determination. The record includes information about the field of supply chain management and the manner in which logistics solutions contribute to its operations, as well as the need to ensure effective and uninterrupted movement of goods and supplies to benefit the national economy. The Petitioner also discussed his company’s operations, noting that its current projects in both the [REDACTED] sectors are both national and international in scope and will ensure the continuity of supply movement between the United States and foreign countries. While the record demonstrates that the Petitioner’s proposed work generating logistics solutions for the supply chain management industry has substantial merit, for the reasons discussed below, the evidence is not sufficient to show this endeavor’s national importance.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The record indicates that the Petitioner earned a bachelor in social communication from [REDACTED] in 2010, and the record contains an academic credentials evaluation from [REDACTED].org equating this degree to a U.S. bachelor’s degree in communication. The Petitioner also submitted letters from his former employers demonstrating he possesses the requisite five years of post-baccalaureate experience. Additionally, the record demonstrates that the Petitioner attained a post-graduate program certificate from the College of Economics and Finance – [REDACTED] in business management in 2014, equated by World Education Services to be equivalent to a one-year U.S. graduate certificate from a regionally accredited institution.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

Therefore, to evaluate whether the proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of the Petitioner’s work. The Petitioner submitted a copy of his company’s business model which outlines the company’s goals, noting that it was created as a result of his past achievements and 10+ years of experience in the industry. According to the model, his company’s operations will be composed of three activities, or “pillars,” described as follows:

- Pillar 1 - International [REDACTED] Logistics Consulting Services
- Pillar 2 – Attract Foreign Investment to the US Domestic Logistics Industry
- Pillar 3 – [REDACTED] Logistics Equipment Rental

The Petitioner indicated that the integration of the three pillars listed above “allows for the integration and complementary relation between [the] pillars in order to favor the US economy.” He also provided examples of how combining [REDACTED] transportation under a single contract (for example, ground and rail, or air, water, and ground) will simplify the import and export process for clients and companies in the United States and abroad. The Petitioner contends that the national importance of his endeavor is thus evident from his company’s business operations and its potential to provide essential logistics services to U.S. companies as well as those doing business abroad. He further states that his company’s ability to attract foreign investments will create more business in the U.S. logistics industry.

Although the Petitioner’s statements reflect his intention to provide valuable logistics solutions to benefit his clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. Rather, his business plan and proposed operations appear to rely primarily on retaining clients in need of specific solutions to simplify their ability to move their products in an efficient manner. While we acknowledge his submission of numerous articles and statistics discussing the manner in which transportation and logistics, and foreign entrepreneurship, is essential to the continued growth of the American economy, the record contains insufficient evidence to demonstrate that the Petitioner’s proposed logistics solutions offer national or global implications within the logistics field or the supply chain management industry. In *Dhanasar*, we determined that the Petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his company and clientele to impact his field or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers a substantial positive economic impact. The Petitioner repeatedly asserts that his proposed logistics solutions will result in increased foreign investment, which will eventually create new business opportunities and new jobs in the logistics sector. He states that “my proposed endeavor through my business is positioned [to] create a tremendous amount of new American jobs (both direct and indirect), international investment into the US domestic economy and revenue to suppliers, logistics handlers and many other businesses through my logistics consulting company [REDACTED] and its current and future clients’ logistics operations.” Although the Petitioner’s business model includes his company’s financial projections and profit and loss expectations for its first five years of operations, the record contains no similar documentation or evidence demonstrating that his logistics solutions will have a positive effect on the regional or national economy. Nor has the Petitioner shown that his undertaking would offer a substantial economic benefit through employment levels or revitalization of an economically depressed area, for example. While the record contains testimonials from clients recognizing the favorable impact the Petitioner’s logistics solutions have had on their companies, there is insufficient evidence that such solutions will extend beyond the Petitioner’s immediate clients to substantially benefit the supply chain management industry.

The Petitioner has not established that his proposed logistics solutions will have implications beyond his U.S. company and its clients at a level sufficient to establish the national importance of his endeavor. While we acknowledge that the Petitioner seeks to provide solutions that enable clients to transport their goods and supplies efficiently, and thus bolster their business operations, the record does not show that the specific work he proposes to undertake offers original innovations that advance the field of logistics solutions, or otherwise has broader implications in the field of supply chain management. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s logistics solutions would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.